



December 20, 2000

Ms. Sara Shiplet Waitt  
Senior Associate Commissioner  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2000-4792

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 142435.

The Texas Department of Insurance (the "department") received a request for six items of information relating to a specific insurance agent. In your letter to this office dated October 16, 2000, you stated that information contained in IAS File Nos. 95-224-I and 95-224-II may involve the proprietary interests of a third party. Pursuant to section 552.305, you did not claim an exception for this information but instead relied upon the third party to raise any exceptions to disclosure for this particular information. *See* Gov't Code § 552.305. In your letter to this office dated October 23, 2000, you explain that, upon further review, the information at issue is relevant to an inquiry by the department's Insurance Fraud Unit. You therefore assert that this information is confidential in accordance with the previous determination issued by this office in Open Records Ruling No. 95-1536 (1995). In that decision, this office advised the department, with respect to section 5(a) of article 1.10D that:

the department must withhold information from required disclosure pursuant to this provision when the following three requirements are met: (1) the information was acquired by the department or reveals information that was acquired by the department; (2) the information is relevant to an inquiry by the insurance fraud unit; and (3) the Commissioner decides the information

must remain confidential for any of the reasons listed in the statute. *See* Open Records Decision No. 608 (1992). Thus, when all of these requirements are met, the department need not refer the matter to this office for a decision. *See* Gov't Code § 552.301; *Houston Chronicle Publishing Co. v. Mattox*, 767 S.W.2d 695 (Tex. 1989).

As we understand that the department has determined, in accordance with Open Records Letter No. 95-1536, that IAS File Nos. 95-224-I and 95-224-II are subject to section 5(a) of article 1.10D, we need not rule here with respect to that information. *See also* Open Records Decision No. 608 (1992) (attorney general may not go beyond assertion of insurance commissioner that information is subject to section 5(a) of article 1.10D).

As to the remaining information you have submitted for our review, you assert that the portions you have identified are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the remainder of the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Except for the information that reveals the identity of the consumer complainants, we find that section 552.101 in conjunction with the common law right to privacy is applicable in this instance to all of the information you have marked for redaction under section 552.101. Therefore, the department must withhold this marked information.

As to one document which we have marked with a red flag, we believe the department must also redact the additional information we have marked. However, because the withholding of the detailed financial and other information sufficiently protects the privacy interests of the consumer complainants, we do not believe that the department must also withhold the information that identifies these individuals. Therefore, the names, addresses, and other identifying information of the consumer complainants is not excepted from disclosure by section 552.101 in conjunction with common law privacy.

You state that certain social security numbers are protected by statute. Section 552.101 also encompasses statutes that make information confidential. You assert that House Bill No. 692, 76<sup>th</sup> Leg., R.S. (1999) provides for the confidentiality of the social security number information you have marked. This provision of law, Act of May 17, 1999, 76<sup>th</sup> Leg., R. S., ch. 314, § 1, 1999 Tex. Gen. Laws 1218, is codified as a note following section 51.251 of the Occupations Code and states in pertinent part:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

Occ. Code § 51.251. We agree that the social security number information you have marked is confidential under section 552.101 in conjunction with section 51.251 of the Occupations Code.

Finally, you assert that the driver's license number and serial numbers that appear in the submitted documents must be withheld from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from required public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Pursuant to this provision, we agree that the department must withhold the Texas driver's license number and serial numbers that appear in the submitted documents.

In summary, the department may rely on the previous determination established in Open Records Letter No. 95-1536 for withholding in their entirety IAS File Nos. 95-224-I and 95-224. As to the remaining documents, the department must withhold the marked information pursuant to section 552.101 in conjunction with the common law right to privacy, except the names, addresses, and identifying information of the consumer complainants is not protected in this instance by a right of privacy. Section 552.101 in conjunction with section 51.251 of the Occupations Code requires the department to withhold the marked social security number information. Section 552.130 requires the department to redact the Texas driver's license

number and serial numbers you have marked. The remaining information is subject to release to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

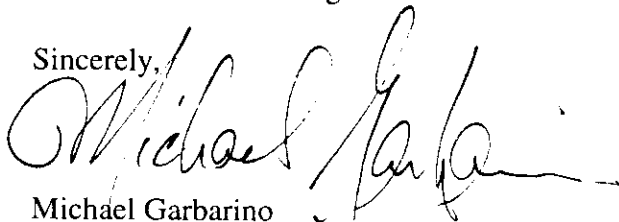
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/NCL/seg

Ref: ID# 142435

Encl. Submitted documents

cc: Mr. Ross Spence  
Crady, Jewett & McCulley  
1400 Two Houston Center  
909 Fannin  
Houston, Texas 77010-1006  
(w/o enclosures)